IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7685 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ROSHANBIBI W/O SHAIKH HUSAIN SHAIKH SADHU

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 7685 of 2002

MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/03/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged his detention order dated 20.7.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "bootlegger" and is required to be detained under the preventive detention, so that, she may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is a reference of four criminal cases, which are registered against the petitioner. The authority, having been subjectively satisfied that the activities of the petitioner are required to be curbed by way of preventive detention, passed the order detaining the petitioner under the preventive detention. The said detention order is challenged by the petitioner by way of this petition.

#. At the time of hearing of this petition, the learned advocate for the petitioner submitted that the last offence registered against the petitioner is dated 29.5.2002, however, according to him, the detention order is passed after a long period, i.e. on 20.7.2002. He submitted that, if really the activities of the petitioner were required to be curbed, it was not necessary to wait for a long time. It is submitted that, by delay in passing the detention order from the last so-called incident, the entire object of detaining a person by way of preventive detention would be frustrated. For that purpose, learned advocate has relied upon the decision of this Court in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported in 1997 (1) GLH 381 wherein the Court in para 21 observed as under.:

> "In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against

the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Praksh v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 (2) Suppli, SCC 61."

#. The detaining authority has filed the affidavit-in-reply wherein in para 22, it is stated as under.:

"With respect to the para : 21 of the petition, I deny the same. I say and submit that the last offence against the petitioner at Pandesara Police Station was registered on 29.5.2002 and the petitioner came to be arrested on 30.5.2002. The statements of the un-disclosed witnesses came to be recorded on 7.7.2002 and verified by me on 15.7.2002 and the order of detention came to be passed on 20.7.2002. Hence, looking to the aforesaid facts and circumstances, there is no delay in passing the order of detention."

#. However, it is required to be noted that, when the petitioner is in judicial custody, it was not necessary to wait even for recording statements of the witnesses, and, if really the activities of the petitioner-detenu are required to be prevented, there is no reason to wait for such a long time, i.e. upto 20.7.2002. In that view of the matter and in view of the judgment referred to above, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 20.7.2002 is quashed and set aside. The detenu Roshanbibi w/o Shaikh Husain Sadhu is ordered to be set at liberty forthwith if she is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)